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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 530

IDA LAURA SIGLER and
DEWEY LESTER SIGLER,

Plaintiffs-Petitioners,

vs.

ALLSTATE INSURANCE COMPANY,
a foreign corporation,

Defendant-Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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MILWAUKEE

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OPINIONS IN THE COURTS BELOW

In the District Court of the United States for the Eastern District of Wisconsin, the Honorable Omer Poos, District Judge, presiding, filed a written opinion granting summary judgment to the defendant dismissing the plaintiffs' complaint.

The United States Court of Appeals for the Seventh Circuit affirmed the judgment of the District Court of the United States for the Eastern District of Wisconsin.

Neither opinion has as yet been officially reported.

JURISDICTION

Jurisdiction is conferred by the provisions of Sections 1254(1) and 2101(c) of Title 28 U. S. Code.

DATE OF JUDGMENT SOUGHT TO BE REVIEWED AND TIME OF ITS ENTRY

The United States Court of Appeals for the Seventh Circuit granted judgment dated July 12, 1963. The judgment was entered on the same date.

QUESTION PRESENTED FOR REVIEW

Is an injured person who retains an attorney to prosecute a claim against an insured tort-feasor, nineteen days before the expiration of a one year Statute of Limitations, estopped to assert that he relied upon a representation made by an insurance company that the Statute of Limitations was two years?

STATEMENT OF THE CASE

The Plaintiffs brought their action initially, in the Circuit Court for Milwaukee County, Wisconsin. The Defendant removed the Case to the District Court of the United States for the Eastern District of Wisconsin. Jurisdiction of the District Court was founded on diversity of citizenship and amount. The Plaintiffs are citizens and residents of the State of Wisconsin. The Defendant is a corporation organized under the Laws of the State of Illinois, with its office and principal place of business in the State of Illinois. The amount demanded in the Plaintiffs' Complaint was $50,000 for Mrs. Sigler, and $6,500 for Mr. Sigler.

ARGUMENT

Rule 19 of the Rules of the Supreme Court of the United States contains an outline of the reasons which the Supreme Court of the United States will consider in granting a review on Writ of Certiorari. Such review is not a matter of right, but is one of sound judicial discretion. The Court will grant a review on Writ of Certiorari only where there are special and important reasons for so doing. The Court has included in Rule 19, a representative list of reasons for granting a review on Writ of Certiorari. The illustrations however do not necessarily control the action of the Court; nor do they fully measure the Court's discretion.

1. The first category of cases which will be reviewed by certiorari are those where a Court of Appeals has rendered a Decision in conflict with the Decision of another Court of Appeals on the same subject matter. The U. S. Court of Appeals for the Seventh Circuit, did not render a Decision in conflict with the Decision of another Court of Appeals on the same subject matter. In their Brief, counsel cite *Beregron vs. Mansour*, 152 F. (2d) 27, (1 Cir.). That was a case in which the Plaintiffs charged an insurance company with fraud in inducing them to refrain from bringing an action until after the Statute of Limitations had barred their claim. The adjustor assured the Plaintiffs they would not need an attorney and, as a consequence, the Plaintiffs did not engage an attorney until some time after the Statute of Limitations had run. There was no conflict between the Decision by the United States Court of Appeals for the First Circuit and the Decision of the United States Court of Appeals for the Seventh Circuit.

2. The Supreme Court of the United States will grant a review by Writ of Certiorari where a United States Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by the Supreme Court of the United States. There is no question of Federal law presented. The questions involved as framed by counsel are whether the plaintiffs were entitled to recover against the defendant for fraud, and whether as a question of fact, the defendant was entitled to have a summary judgment dismissing the Plaintiffs' Complaint.

3. The Supreme Court of the United States will grant a review by Writ of Certiorari where a United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned a departure by a lower Court as to call for an exercise of the power of supervision by the Supreme Court of the United States. Counsel for the Petitoner have not suggested any such departure either by the United States Court of Appeals or by the Trial Court. In both Courts the opinions filed explained the reasons for the conclusions. Both are well-written opinions which are wholly devoid of the ubiquitous dilative conjunction "therefore" so frequently condemned by legal scholars. There is nothing in the record to suggest any deprivation of the rights of the plaintiffs in the two Lower Courts, and there is absent any act or circumstance which calls for an exercise of the power of supervision by the Supreme Court of the United States.

CONCLUSION

In conclusion, we submit that the Plaintiffs are not entitled to a review by a Writ of Certiorari of the Decision of the United States Court of Appeals for the Seventh Circuit. It follows that the Petition for the Writ should be denied.

Respectfully submitted,

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